

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS, INDIANA
2003 NOV -7 PM 3:22
SOUTHERN DISTRICT
OF INDIANA
LAURA A. SCIGGS
CLERK

THOMAS J. RITCHEY,

Plaintiff,

v.

THE KROGER CO.,

Defendant.

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)
)
) CAUSE NO:
)
)
)

1: 03-CV-1655 SEB - VSS

COMPLAINT AND DEMAND FOR JURY TRIAL

1. Plaintiff, Thomas J. Ritchey (hereinafter "Ritchey"), by counsel, for his cause of action against Defendant, The Kroger Co. (hereinafter "Defendant"), alleges violations of the Americans with Disabilities Act ("ADA"), as amended, 42 U.S.C. § 12101 et seq., in that Defendant discriminated against, and harassed, Ritchey because of his disability.

PARTIES

2. Ritchey had at all relevant times to this action resided in the Southern District of Indiana.

3. Defendant is a corporation doing business in the Southern District of Indiana.

JURISDICTION AND VENUE

4. Defendant is an "employer" as that term is defined by the ADA, 42 U.S.C. § 12111(5).

5. Ritchey was, at all relevant times, an "employee" as that term is defined by the ADA, 42 U.S.C. § 12111(4).

6. Prior to, and at the time of this termination, Ritchey had a "disability" as that term

is defined by the ADA, 42 U.S.C. § 12102(2) because he had a record of physical impairment and/or he has a physical impairment that substantially limited one or more of his major life activities and/or Defendant regarded him as having such an impairment.

7. Ritchey timely filed charge number 240-2003-02040 with the Equal Employment Opportunity Commission ("EEOC") claiming discrimination and harassment because of his disability and brings this Complaint within 90 days after receipt of a Notice of Suit Rights.

8. Jurisdiction is conferred on this Court by the ADA, 42 U.S.C. § 12117; 28 U.S.C. §1331; and 28 U.S.C. §1343.

9. As all events, transactions, and incidents concerning this case have arisen in the geographical environs of the Southern District of Indiana, venue is proper in this Court.

FACTUAL ALLEGATIONS

10. Defendant hired Ritchey on or about June 14, 1997 as a store clerk. Thereafter, Ritchey was promoted to the meat cutting department.

11. At all relevant times, Ritchey met Defendant's legitimate performance expectations.

12. In early 2001, Defendant learned of Ritchey's disability. Specifically, Defendant was advised of Ritchey's disability after Ritchey was injured while performing his duties.

13. Within three (3) days of learning of Ritchey's disability, Defendant removed Ritchey from his meat cutting duties and, eventually, made him a grocery clerk.

14. Thereafter, Defendant harassed and/or discriminated against Ritchey because of his disability. For example, Defendant manipulated Ritchey's work assignment with little or no notice; reduced his hours; assigned him to jobs Defendant knew Ritchey could not or should not perform because of his disability; lambasted him in front of customers about his breaks; and

cancelled pre-planned and/or approved vacations without explanation.

15. On or about March 14, 2003, Defendant wrongly and pretextually accused Ritchey of working under the influence of alcohol. Ritchey agreed to submit to testing, the results of which clearly reflected that Ritchey was not under the influence of alcohol while at work.

16. Defendant later terminated Ritchey after placing him on indefinite suspension. Defendant's reason for terminating Ritchey is a pretext for its unlawful discrimination based on Ritchey's disability.

17. Ritchey has suffered harm because of Defendant's actions.

COUNT I - ADA DISCRIMINATION

18. Ritchey hereby incorporates paragraphs one (1) through seventeen (17) of his Complaint.

19. Defendant intentionally violated and/or showed reckless disregard for Ritchey's rights as protected by the American with Disabilities Act, as amended, 42 U.S.C. § 12101 et seq., by terminating his employment because of his record of physical impairment and/or because he has a physical impairment that substantially limited one or more of his major life activities and/or because Defendant regarded him as having such an impairment.

COUNT II - ADA HARASSMENT

20. Ritchey hereby incorporates paragraphs one (1) through nineteen (19) of his Complaint.

21. Defendant engaged in a continuing violation by harassing Ritchey because of his record of physical impairment and/or because he has a physical impairment that substantially limited one or more of his major life activities and/or because Defendant regarded him as having

such an impairment, thereby creating an unlawful and hostile work environment.

22. Defendant violated Ritchey's rights as protected by the American with Disabilities Act, as amended, 42 U.S.C. § 12101 et seq., by harassing him because of Ritchey's record of being disabled and/or because of Defendant's perception that Ritchey was disabled and/or because Ritchey is disabled.

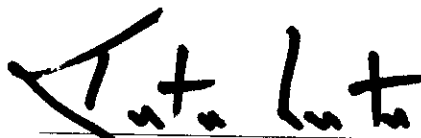
23. Defendant acted intentionally or with reckless disregard with respect to Ritchey's statutory rights provided for by the Americans with Disabilities Act.

REQUESTED RELIEF

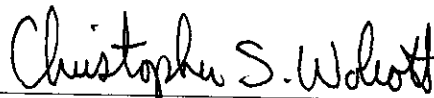
WHEREFORE, Plaintiff, Thomas J. Ritchey, by counsel, respectfully requests that this Court find for Plaintiff and order Defendants to:

1. Instate Plaintiff to the position, salary and seniority level he would have enjoyed but for Defendant's unlawful employment actions;
2. Pay Plaintiff's lost wages and benefits;
3. Pay to Plaintiff compensatory and punitive damages;
4. Pay to Plaintiff pre- and post-judgment interest;
5. Pay Plaintiff's costs and attorney fees incurred in litigating this action; and
6. Provide any further equitable relief this Court sees fit to grant.

Respectfully submitted,



Kenneth E. Lauter (#15900-49)



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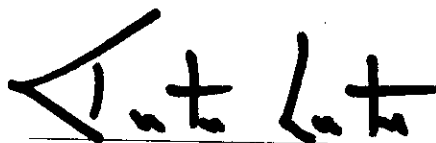
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Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff, Thomas J. Ritchey, by counsel, respectfully requests a jury trial for all issues deemed triable by jury.

Respectfully submitted,



Kenneth E. Lauter (#15900-49)

Christopher S. Wolcott (#23259-32)